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FEDERAL MARITIME COMMISSION

Original Title Page

COSCON/NYK EQUIPMENT REPOSITIONING AGREEMENT

A SPACE CHARTER AGREEMENT

FMC Agreement No. **012342**

EXPIRATION DATE: None.

This Agreement has not been published previously.



TABLE OF CONTENTS

<u>Article</u>	<u>Name</u>	<u>Page</u>
1	Full Name of the Agreement	1
2	Purpose of the Agreement	1
3	Parties to the Agreement	1
4	Geographic Scope of the Agreement	1
5	Overview of Agreement Authority	1
6	Officials of the Agreement and Delegations Of Authority	2
7	Duration and Termination of the Agreement	2
8	Governing Law and Arbitration	3
9	Notice	4
10	Non-Assignment	4
	Signature Page	

**ARTICLE 1: FULL NAME OF THE AGREEMENT**

The full name of this Agreement is the COSCON/NYK Equipment Repositioning Agreement (the "Agreement").

**ARTICLE 2: PURPOSE OF THE AGREEMENT**

The purpose of this Agreement is to authorize the parties to agree on cooperative working arrangements and to share space on each other's vessels only in connection with the repositioning of equipment in the Trade (as hereinafter defined).

**ARTICLE 3: PARTIES TO THE AGREEMENT**

The parties to this Agreement are

COSCO Container Lines Co. Ltd. ("COSCON")  
378 Dong Da Ming Road  
Shanghai, People's Republic of China 200080

Nippon Yusen Kaisha ("NYK")  
3-2 Marunouchi 2-Chome  
Chiyoda-ku  
Tokyo 100-91 Japan

(Collectively the "Parties" and individually a "Party")

**ARTICLE 4: GEOGRAPHIC SCOPE OF THE AGREEMENT**

The geographic scope of this Agreement (the "Trade") shall be the movement of equipment from all U.S. ports (East, West, and Gulf Coasts) to ports in the countries of China (including Hong Kong), Thailand, Taiwan, Japan, Korea, Vietnam, Malaysia, Indonesia, and Singapore.

**ARTICLE 5: OVERVIEW OF AGREEMENT AUTHORITY**

- 5.1. The Parties are authorized to charter space to each other, up to the full reach of the vessel, for the repositioning of equipment (e.g., containers, chassis, etc.) in the Trade, on vessels owned, chartered, or managed by a Party, or on which a Party has space, on such terms and conditions as the Parties may from time-to-time agree. To facilitate efficient operations under this Agreement, the Parties may discuss and agree upon sailing schedules, the type, size and condition of equipment that may be transported, space requirements and the availability of space, the place and timing of space provision, procedures for booking space, for documentation, for equipment handling requirements or instructions, and for other administrative and operational matters relating to the chartering and provision of such space.

- 5.2.** Compensation for any space chartered pursuant to this Agreement shall be upon such terms and hire (including exchange), and on such billing and payment terms and conditions, as the Parties may from time to time agree.
- 5.3.** The Parties are authorized to discuss and agree upon arrangements for the use of terminals in connection with the transportation of equipment hereunder, including entering into exclusive, preferential, or cooperative working agreements with marine terminal operators, stevedores, and/or other providers of shore side services. Nothing herein, however, shall authorize the Parties jointly to operate a marine terminal in the United States.
- 5.4.** The Parties are authorized to exchange information on any matter within the scope of this Agreement and to reach agreement on any and all administrative and operational functions related thereto, including without limitation forecasting, stevedoring and terminal operations, stowage planning, recordkeeping, insurance, liability, claims, claim resolution, indemnities, compliance with regulatory requirements, failure to perform, and force majeure. Any further agreements shall be implemented in accordance with the filing and effectiveness requirements of the United States Shipping Act, codified at 46 U.S.C. 40101 et seq., and implementing regulations of the Federal Maritime Commission, to the extent applicable.

#### **ARTICLE 6: OFFICIALS OF THE AGREEMENT AND DELEGATIONS OF AUTHORITY**

- 6.1.** This Agreement shall be administered and implemented by decisions, memoranda, writings and other communications between the Parties, as determined by the Parties.
- 6.2.** The following shall have the authority to file this Agreement, any subsequent modification thereto, and any supporting information with the FMC, as well as the authority to delegate same: (a) any authorized officer or official of either Party; (b) legal counsel for either Party.

#### **ARTICLE 7: DURATION AND TERMINATION OF THE AGREEMENT**

- 7.1.** This Agreement shall commence on the date it becomes effective under the United States Shipping Act, as amended. It shall remain in force indefinitely unless terminated in accordance with the terms hereof. Either Party may terminate the Agreement by giving not less than three (3) months' prior written notice to the other Party. This Agreement may be terminated at any time by mutual agreement of the Parties.
- 7.2.** If one Party commits any one of the following situations, the other Party has the right, by giving written notice, to terminate this Agreement immediately.

a) Commencement of dissolution procedure;

- b) Filing of bankruptcy or insolvency procedure; or
- c) Any similar circumstances or events.

**7.3.** Termination of the Agreement shall not affect any previously-accrued rights and obligations between the Parties.

**ARTICLE 8: GOVERNING LAW AND ARBITRATION**

**8.1.** This Agreement shall be governed by and interpreted in accordance with the Laws of England; provided, however that the Parties are not relieved of their obligations under the United States Shipping Act, as amended.

**8.2.** (a) Any dispute, claim or difference which may arise under or in connection with this Agreement that cannot be amicably resolved shall, unless the Parties otherwise agree, be settled by arbitration in London in accordance with the Laws of England and the Arbitration Act of 1996 or any statutory modification or reenactment thereof then in force before a panel of three (3) arbitrators unless the Parties agree to a single arbitrator. The arbitration shall be conducted in accordance with the London Maritime Arbitration Association (LMAA) rules and terms current at the time that the arbitration is commenced.

(b) Unless the Parties in the dispute agree on the appointment of a single arbitrator, the matter in dispute shall be referred to three arbitrators, one to be appointed by the Party complaining, one to be appointed by the Party complained against, and the third (the umpire) to be selected by agreement of the two arbitrators thus appointed. If the two arbitrators cannot agree upon the umpire within four (4) weeks after their appointment, the umpire shall be appointed by the then Chairman of the London Maritime Arbitrators Association. If either of the Parties fails to appoint an arbitrator within twenty-one (21) days after the other has given written notice of the appointment of its arbitrator, then the arbitrator appointed by such other party shall act as sole arbitrator.

(c) The arbitrator(s) or umpire shall render a decision in writing with utmost dispatch. The award given by the arbitrator(s) or umpire shall be final and binding upon all parties concerned.

**8.3.** For disputes the sum of which does not exceed the amount of USD100,000 the arbitration shall be conducted in accordance with the LMAA Small Claims Procedures current at the time the arbitration proceeding is commenced.

**8.4.** Judgment upon the arbitration award may be entered in any court having jurisdiction or application may be made to such court for judicial acceptance of the award and an order of enforcement, as the case may be.

**ARTICLE 9: NOTICE**

Except as otherwise agreed, any correspondence, notices hereunder, legal process, or other formal communications required by or in connection with this Agreement shall be in writing and sent by courier service or registered mail (or confirmed email or fax in the event that expeditious notice is required) to the other Party at the official company address set forth in Article 3.

**ARTICLE 10: NON-ASSIGNMENT**

Neither Party may assign its rights (including the right to use chartered space) or delegate its duties under this Agreement to any other person or entity without the prior written consent of the other Party. Notwithstanding the above, each of the Parties may on written notice to the other Party assign its rights or delegate its duties under this Agreement to a fully-owned subsidiary that is a vessel-owning common carrier within the meaning of the United States Shipping Act, as amended; provided that in the event of such an assignment the Party to this Agreement shall remain responsible for the due and punctual performance to this Agreement by such subsidiary.

**SIGNATURE PAGE**

IN WITNESS WHEREOF, the Parties have agreed this 26<sup>th</sup> day of May, 2015, to execute this Agreement and to file same with the U.S. Federal Maritime Commission.

**COSCO CONTAINER LINES CO, LTD.**

By: \_\_\_\_\_



**NIPPON YUSEN KABUSHIKI KAISHA**

By: \_\_\_\_\_

